985.

SUPREME COURT OF THE UNITED STATES.

No 161.

JOHN D. MURRELL AND THE BANK OF NEW ORLEANS

vs.

ALEXANDER NEILL AND WILLIAM T. SOMERVILLE.

ON APPEAL FROM THE CIRCUIT COURT UNITED STATES FOR THE DISTRICT OF MARYLAND.

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THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a special circuit court of the United States for the fourth circuit, in and for the Maryland district, appointed by the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, held at the city of Baltimore, on the eleventh day of July, in the year of our Lord one thousand eight hundred and forty-six.

Present, the honorable Roger B. Taney, chief justice of the Supreme Court of the United States; Upton S. Heath, judge of Maryland district; Moreau Forrest, esq., marshal; Thomas Spicer, clerk.

Among other were the following proceedings, to wit:

JOHN D. MURRELL and the Bank of New Orleans
vs.
ALEXANDER NEILL and William T. Somerville.

Be it remembered that heretofore, to wit, on the third day of October, in the year of our Lord one thousand eight hundred and forty-three, came John D. Murrell and the Bank of New Orleans, by John Glenn and S. T. Wallis, their solicitors, into said circuit court here, and exhibited in said court their bill of complaint against Alexander Neill, in the words following, to wit:

Bill of complaint.

To the honorable the judges of the circuit court of the United States for the fourth circuit, sitting in equity.

The bill of complaint of John D. Murrell, a citizen of the State of Virginia, and the Bank of New Orleans, whose stockholders are citizens of the State of Louisiana, for and on account of themselves and others, the creditors of Luke Tiernan, deceased, late a citizen of the State of Maryland, who, having a right to join in this proceeding, may make themselves parties to the same by contributing to the expense thereof, humbly sheweth:

That the said Luke Tiernan, in his lifetime, being a partner in the mercantile house of Luke and Charles Tiernan, in the city of Baltimore, and also a partner in the mercantile house of Tiernan, Cuddy, and Company, in the city of New Orleans, the two said mercantile houses and firms did become indebted unto your orators in and about the sum of one hundred thousand dollars unto each of your orators respectively; and, being so indebted, the two said houses and each of them did separately become unfortunate in business, and did at last utterly fail to meet their engagements, remaining indebted unto your orators in the respective amounts above set forth, as your orators are ready

to prove; and that the said debts still remain due and unpaid to your orators.

And your orators further allege, that the said Luke Tiernan departed this life some time in the year eighteen hundred and forty-one; and that the two aforesaid houses of Luke and Charles Tiernan and Tiernan, Cuddy, and Company, as well as all the partners therein surviving the said Luke, remained and now are utterly insolvent, or have died insolvent since that time.

And your orators further charge, that some time previously to the death of the said Luke Tiernan, and after the aforesaid debts had become due unto your orators as aforesaid, but at what time your orators are unable particularly to aver, the said Luke did make and execute a certain deed of trust unto a certain Alexander Neill, a citizen of the State of Maryland, residing in Hagerstown, in Washington county, of said State, and to his heirs, of certain lands and tenements, lying and being in the State of New York; and your orators aver, that of the particular matters contained in said deed they cannot with certainty speak, not having access thereunto or to a copy thereof; but they are informed, and verily believe, and so charge, that the said lands and tenements were so conveyed unto the said Neill and his heirs, in trust, to sell and dispose of the same immediately, and to divide the proceeds thereof among the creditors of said Luke Tiernan generally; all of which, as well as the other matters and things contained in said deed of trust, will more fully appear, when the said deed of trust, or a copy thereof, shall have been produced in this court by said Neill. And your orators further charge that the individual debts of said Luke Tiernan have been long since fully paid and satisfied, and that the property so as above conveyed to said Neill, if the said trust were duly and diligently administered, would contribute largely towards satisfying, if it did not entirely satisfy and pay, all the liabilities of said Luke Tiernan for and on account of his partnership debts as aforesaid unto your orators and others. But your orators charge that said Neill hath utterly and altogether neglected said trust and the proper administration thereof, and that he hath neglected to sell or enforce a sale of said property so conveyed to him, and to collect debts already long due for and on account of said property or parts thereof; that although his receipts as trustee, from and on account of said property, have or should have been large, he has altogether failed and declined to account therefor or for any part thereof, or to pay over and distribute the same when thereunto requested, or in any wise faithfully to discharge the duties by the provisions of said deed of trust imposed on him; all of which is contrary to good conscience, and entitles your orators to the interference and relief which a court of equity can give in the premises. To the end, therefore, that the said Alexander Neill may full and true answer make on oath to this bill, and to all the matters and things hereinbefore set forth and charged, as fully as if the same were repeated and he thereunto specially interrogated, and particularly that he may produce and file with his answer the said deed of trust, or a certified copy thereof; that he may render a full and

true inventory of all the property which he has ever received, possessed, or held under or by virtue of said deed of trust, and of all the property embraced in and to him conveyed by said deed of trust, and its value, together with the condition of the same at the time of filing his answer hereunto, the occupants thereof, and the terms of their said occupation; and that he may render a full and true account of all of said property which remains unsold, and of its value, and of all sales of said property which he has at any time made, or which down to the filing of his said answer he shall have made; and that he shall render a full and detailed account of any or all moneys which he may have received down to the filing of his said answer, from, out of, or on account of said property, together with the disposition which he may have made thereof, and the vouchers of his disbursements, if any, and the amount which now remains in his hands, as well as any and all sums which may at the time of the filing of said answer be in any way due to him as trustee aforesaid, or on account of said trust property; and that the said Alexander Neill, for and on account of his negligence aforesaid, may be removed from said trusteeship, and that some competent person may be by your honors named in his stead; and that your orators may have such other and further relief as their case may require. May it please your honors to cause the writ of subpœna to be issued to said Alexander Neill commanding him to appear on a day, under a pain certain, to answer the premises, and to abide by such decree as may be rendered therein; and your orators will, &c.

JOHN GLENN,
S. TEACKLE WALLIS,
Solicitors for complainants.

Afterwards, to wit, on the eleventh day of January, in the year of our Lord one thousand eight hundred and forty-four, the said Alexander Neill, by John Nelson, his solicitor, filed in said cause his answer and exhibit in the words following, to wit:

The answer of Alexander Neill, of Washington county, and State of Maryland, to the bill of complaint of John D. Murrell and the Bank of New Orleans, in the circuit court of the United States, for the fourth district, sitting in equity, exhibited.

Answer of Alexander Neill.

This respondent, now and at all times hereafter saving and reserving to himself all and every manner of advantage and benefit of exception to the many errors, uncertainties, and imperfections in said bill of complaint contained, for answer thereto nevertheless, or to such parts thereof as he is advised it is material he should answer unto, saith:

That of the indebtedness of the firms of Luke and Charles Tiernan, and Tiernan, Cuddy & Co. to the complainants, this respondent has no personal knowledge; having understood from one of the complainants he was a creditor, therefore neither denies or admits the same, but leaves the complainants to prove their claims if any, which they may have against said firms respectively.

This respondent believes, and therefore admits, that said mercantile firms became unfortunate in business, and have failed to meet their engagements. This respondent likewise admits that Luke Tiernan departed this life on or about the 9th day of November, 1839; but does not admit, because he does not know, that he died utterly insolvent; nor does he either admit or deny, having *no* personal knowledge thereof, that all the partners of the two firms aforesaid are, or have died insolvent, but he leaves the complainants to prove the same, if such be the fact.

This respondent further answering denies, that Luke Tiernan at any time made and executed to respondent a deed of trust for certain lands and tenements lying and being in the State of New York, for the purposes stated in said bill of complaint, or for any other purposes.

This respondent further answering states, that Luke Tiernan did, on the 24th day of September, 1839, execute a deed of conveyance for certain lands lying in the State of New York, to a certain Charles H. Carroll, of said State, of which he herewith files a copy marked A, and which he prays may be received and taken as a part of this answer; that in pursuance of the authority conferred by said deed, the said Charles H. Carroll has made sales of said land from time to time, but to what precise amount this respondent cannot state; that under the terms of said conveyance the said Charles H. Carroll has remitted as part of the fifteen thousand dollars directed by said deed to be paid into the hands of this respondent, the amounts following, viz:

On the first day of March, 1841, by draft on the Merchants' Bank of New York, - -		$3,513 17
Upon which he received a premium of - -		105
On the 18th of October, 1841, draft, - -		2,500
Premium thereon, - - - -		87 50
On the 22d Feb'y, 1842, draft, - - -		2,000
Ditto, ditto, - - - -		974
Premium on said drafts, - - -		96 65
On the 22d June, 1843, draft, - - -		800
By ditto on Livingston County, N. York, -	1,100	
Less discount on said draft, - - -	13 10	
On the 9th January, 1844, two checks on the Bank		1086 90
of America, New York, - - -		2,500
		$13,663 22

Of which sum this respondent on the 26th of February, 1842, invested nine thousand dollars, and for interest on which he is chargeable.

That the above stated sum is the whole amount of money which has been received by this respondent, on account of sales made by Charles H. Carroll aforesaid, of said lands in the State of New York; that he has repeatedly applied to the said trustee for other and additional remittances, and that in the month of June last, he visited New York with a view of enforcing upon Mr. Carroll the necessity of his making further

payments; that respondent then received the sums of credited amounting to $1,886 90, with the promise of further remittances, and that the said Carroll has paid to this respondent, upon a visit of his to Washington city for the purpose of urging further payments, twenty-five hundred dollars, as noted above, and promises the early payment of the balance of said sum of fifteen thousand dollars; that it has been the design of this respondent, as it will be his duty when the said sum of fifteen thousand dollars shall have been received, to distribute the same according to the terms of the deed amongst those who may be entitled to it, under the direction of some competent tribunal. This respondent avers, that as far as he is concerned, he has been guilty of no negligence, but on the contrary he has used extraordinary exertions to fulfil the objects of the deed of conveyance aforesaid, and that he is perfectly willing at any time to pay over the funds in his hands when he can properly do so, to those who are ascertained to be the creditors within the meaning of said deed.

This respondent further answering says, that he is advised that it is not competent for this honorable court, upon the present proceedings, to decree any distribution of said funds in his hands, for the want of proper parties thereto; that the personal representatives of said Luke Tiernan, Frederick Chalard, and Charles H. Carroll, are necessary parties thereto, interested as the first are in the question, how far the complainants are creditors of Luke Tiernan within the terms of said conveyance, and the others as parties thereto.

This respondent further states, that proceedings have been instituted, by persons professing to be creditors of Luke Tiernan, in the courts of the State of New York, against the above named Charles H. Carroll and the personal representatives of Luke Tiernan, deceased, to reach the funds and estate in the hands of said trustee under the said deed, and which are still undisposed of, and pending therein.

This respondent is not aware of the value of said lands, except from information, but believes that the said trustee estimates them to be worth, in the whole, upwards of one hundred thousand dollars.

This respondent prays hence to be dismissed with his costs in this case most wrongfully sustained, &c.

JNO. NELSON, *Sol. for def't.*

MARYLAND, *Balt. city, sc:*

On this 11th day of January, 1844, personally appeared Alex'r Neill, defendant in the foregoing answer, and made oath that the facts therein stated are true, to the best of his knowledge and belief.

T. HANSON BELT.

Exhibit A, referred to in the answer.

Exhibit A, referred to in the above answer.

An indenture, made the twenty-fourth day of September, in the year of our Lord one thousand eight hundred and thirty-nine, between Luke Tiernan, of the city of Baltimore, in the State of Maryland, and Anne,

his wife, of the first part, and Charles H. Carroll, of the town of Groveland, in the county of Livingston, in the State of New York, of the second part: Whereas, the said Luke Tiernan was lately seized in fee of parts of a large tract of land called the Tuscarora tract, situate partly in the town of Mount Morris, in the county of Livingston aforesaid, and partly in the town of Nunda, in the county of Allegany, and State of New York, aforesaid.

And whereas a large portion of said lands have been sold by Charles H. Carroll, above named, under and by virtue of a power of attorney executed by the said Luke Tiernan to him, bearing date the third day of December, in the year of our Lord one thousand eight hundred and twenty-two, some of which has been conveyed by the said Luke Tiernan, by his attorney aforesaid, under and by virtue of the aforesaid power of attorney, and otherwise held by the purchasers, under and by virtue of contracts, for the purchase and sale thereof.

And whereas the said Anne Tiernan, before any of the aforesaid sales were made, was, and still is, the wife of the said Luke Tiernan, and, should she him survive, would have been entitled to dower, of, in, and to all the aforesaid lands so sold as aforesaid, but for the release of dower hereinafter mentioned.

And whereas the said Anne Tiernan, without receiving or having secured for her separate use any consideration therefor, did, on the twenty-fifth day of June, in the year of our Lord one thousand eight hundred and thirty-five, by an instrument in writing, duly executed and acknowledged, release all and singular her right or claim to dower to the said Charles H. Carroll to all and singular the lands that had then been, or should thereafter be, conveyed, under and by virtue of the aforesaid power of attorney, which said release or instrument in writing is recorded in the office of the clerk of the county of Livingston, in liber fourteen of deeds, at pages five hundred and eighty-two and five hundred and eighty-three.

And whereas the aforesaid power of attorney is hereby revoked, and the authority of the said Charles H. Carroll to sell and convey, under and by virtue of the same, has ceased, except in so far as the same relates to contracts made, and still subsisting, for the sale of the lands where conveyances have not been executed, in all which cases he is to proceed as if no such revocation had been made.

And whereas the lands hereinafter particularly described, being parts of the said Tuscarora tract, and estimated to be worth, in the aggregate, about one hundred and twenty thousand dollars, still remain unsold, and the legal and equitable title thereto is still in the said Luke Tiernan.

And whereas the said Luke Tiernan was indebted, at the time of her death, to Anne E. Brien, now deceased, in the sum of four thousand four hundred and fifty dollars, which said sum yet remains unpaid; and Luke Tiernan Brien, the only child and heir at law of the said Anne E. Brien, is entitled to demand and receive the aforesaid sum of four thousand four hundred and fifty dollars, so due to the said Anne E. Brien in her lifetime, as aforesaid.

And whereas the said Luke Tiernan is indebted to divers other persons, residing in different parts of the United States of America, in a large amount of money in the aggregate, but the names of all the persons to whom he is so indebted, and the amount due to each, respectively, the said Luke Tiernan is now unable to specify particularly.

And whereas the said Luke Tiernan is desirous of conveying the lands hereinafter described, in trust that the same shall be sold, and the proceeds thereof applied in the manner hereinafter particularly specified.

And whereas it is believed that the said lands cannot be sold except at prices far below their value, unless the right of dower of the said Anne Tiernan shall be extinguished. To the end, therefore, that the said lands may be sold at fair and reasonable prices, the said Anne Tiernan has agreed to extinguish her right of dower of, in, and to the said lands, in consideration that the sum of twelve thousand dollars, part and parcel of the proceeds of the sales of said lands, as a reasonable compensation for the said right of dower, should be secured and set apart for her separate use.

And whereas, also, it is believed that said lands cannot be sold at fair and reasonable prices except credits shall be given for a large amount of the purchase money; now, therefore, this indenture witnesseth, that the said parties of the first part, for and in consideration of the premises, and of one dollar to them in hand paid by the party of the second part, the receipt whereof is hereby confessed and acknowledged, have granted, bargained, sold, remised, released, aliened and confirmed, and by these presents do grant, bargain, sell, remise, release, alien, and confirm, unto the said party of the second part, and to his assigns forever, all those certain tracts or parcels of land situate, lying, and being in the town of Mount Morris, in the county of Livingston and State of New York, being part of the Tuscarora tract aforesaid, to wit: Lot number five, containing two hundred and eighteen acres and seventy-three hundredths of an acre; also lot number twelve, containing one hundred and thirty-seven acres and forty-one hundredths of an acre; also part of lot number thirteen, bounded on the south and west by the south and west lines of the lot, on the east by lands owned by Aaron Moyer, and on the north by lands owned by Jesse Moyer, containing forty-three acres and ninety-two hundredths of an acre; also part of lot number fourteen, bounded on the south and west by the south and west lines of the lot, on the east by lands owned by Richard Divinney and the heirs of Samuel Vanderbeek, and on the north by lands owned by Richard Divinney and John Divinney, containing seventy-six acres and twelve hundredths of an acre; also part of lot number fifteen, bounded on the north and east lines of the lot, on the south by lands owned by Michael Fralin, and on the west by lands owned by Philip Depuy, containing thirty-two acres; also part of lot number sixteen, bounded on the north, east, and south by the north, east, and south lines of the lot, and on the west by lands owned by Michael Fralin, containing one hundred and seventy-three acres and thirteen hundredths of an acre; also part of lot number eight, bounded on the north, west, and south by

the north, west, and south lines of the lot, and on the east by lands owned by Anne McNair and James H. McNair, containing ninety-nine acres and seventy-six hundredths of an acre; also part of lot number thirty-six, bounded on the east, north, and west by the east, north, and west lines of the lot, and on the south by lands owned by John Olp, containing ninety-four acres; also part of lot number thirty-seven, bounded on the north, east, and south by the north, east, and south lines of the lot, and on the west by lands owned by John Barnes and Daniel Anthony, containing one hundred and twenty-four acres and fifty-two hundredths of an acre; also part of lot number thirty-eight, bounded on the north and west by the north and west lines of the lot, on the south by lands owned by Chauncey Hungerford, and on the east by lands owned by John Millhollen and Conrad Swartout, containing ninety-three acres and thirty-four hundredths of an acre; also part of lot numbered forty-five, bounded on the south and east by the south and east lines of the lot, on the west by lands owned by John S. Buck, and on the north by lands owned by Henry McCarney, containing sixty-three acres and forty-four hundredths of an acre; also part of lot number forty-six, bounded on the south and west by the south and west lines of the lot, on the north by lands owned by Chauncey Hungerford, and on the east by lands owned by Jonas Bunce and Aaron Northway, containing forty-four acres and sixty-seven hundredths of an acre; also part of lot number forty-eight, bounded on the north and south by the north and south lines of the lot, on the east by the Cushequa creek, and on the west by lands owned by John Vanderwater, containing fifty-four acres and forty-five hundredths of an acre; also lot number fifty, containing fifty-eight acres and six hundredths of an acre; also lot number fifty-nine, containing eighty-seven acres and fifty-two hundredths of an acre; also part of lot number fifty seven, bounded on the north and south by the north and south lines of the lot, on the east by the Cushequa creek, on the west by lands owned by John Vanarsdall, containing forty-nine acres and eighty hundredths of an acre; also part of lot number fifty-four, bounded on the east, south, and west, by the east, south, and west lines of the lot, and on the north by lands owned by John C. Decamp, containing one hundred acres; also part of lot number fifty-five, bounded on the north, east, and south, by the north, east, and south lines of the lot, and on the west by lands owned by Jonathan Hagadorn and Robert Hagadorn, containing one hundred and twenty-eight acres and thirty-two hundredths of an acre; also part of lot number fifty-six, bounded on the north, in part, by lands owned by Abram Vanonsdall, and on the north line of the lot, on the west and south, by the west and south lines of the lot, and on the east by lands owned by the said Abram Vandonsdall, and the east line of the lot, containing one hundred and seventy-four acres and ninety-five hundredths of an acre; also part of lot number fifty-eight, bounded on the north, west, and south, by the north, west, and south lines of the lot, and on the east by lands owned by John Vanderwater, containing nineteen acres and twenty-five hundredths of an acre; also one other part of said lot

number fifty-eight, bounded on the north by the north line of the lot, on the east and south by the Cushequa creek, and on the west by lands owned by John Vanderwater; also part of lot number sixty, bounded on the east by lands owned by Joseph P. Perine, on the north by the north line of the lot and the Cushequa creek, on the west by the Cushequa creek and lands owned by John Vanderwater, and on the south by the south line of the lot; the last two parcels containing, jointly, forty-six acres and seventy-seven hundredths of an acre.

Also lot number sixty-four, containing one hundred and sixty-five acres and twenty-two hundredths of an acre. Also part of lot number sixty-six, bounded on the east and west by the east and west lines of the lots, on the south by the Cushequa creek, and on the north by lands owned by Charles Purchase and William Arnold, containing one hundred and twelve acres and forty-six hundredths of an acre. Also part of lot number sixty-seven, bounded on the east and west by the east and west lines of the lot, on the south by the Cushequa creek, and on the north by lands owned by Thomas Bodine, containing one hundred and two acres and fifty hundredths of an acre. Also part of lot number sixty-nine, bounded on the north and south by the north and south lines of the lot, on the west by the Cushequa creek, and on the east by lands owned by William McKee, containing seventy-one acres. Also part of lot number seventy, bounded on the north and south by the north and south lines of the lot, on the west by the Cushequa creek, and on the east by lands owned by Alfred Morrells, containing eighty-six acres and sixty-six hundredths of an acre. Also part of lot number seventy-seven, bounded on the east and west by the east and west lines of the lot, and on the *on the* south by the Cushequa creek, and on the north by lands owned by Thomas Vanorsdall, containing one hundred and sixty-nine acres and forty-two hundredths of an acre of land. Also lot number seventy-eight, containing one hundred and thirty-seven acres and fifty hundredths of an acre. Also lot number eighty-four, containing one hundred and fifty-one acres and fifty hundredths of an acre. Also part of lot number eighty-five, bounded on the east and west by the east and west lines of the lot, on the north by the Cushequa creek, and on the south by lands owned by John Chamberlin, containing one hundred and one acres. Also part of lot number eighty-seven, bounded on the north, west, and south, by the north, west, and south lines of the lot, and on the east by lands owned by Charles Purchase, containing seventy-nine acres and seventy-three hundredths of an acre.

Also all those certain tracts or parcels of land situate, lying, and being in the town of Nunda, in the county of Alleghany, and State of New York aforesaid, being a part of the Tuscarora tract aforesaid, to wit, part of lot number twenty-three, bounded on the south and east by the south and east lines of the lot, on the west by lands owned by Jacob R. Guy, and on the north by lands owned by William R. Duryce, containing twenty-four acres and sixty-nine hundredths of an acre. Also part of lot number twenty-four, bounded on the south and east by the south

and east lines of the lot, on the north by the north line of the lot and lands owned by Thomas Twist, and on the west by the west line of the lot, and lands owned by the said Thomas Twist, containing one hundred and ninety-two acres. Also part of lot number twenty-five, bounded on the north, east, and south, by the north, east, and south lines of the lot, and on the west by lands owned by David Filkins, containing one hundred and fifteen acres and thirteen hundredths of an acre. Also lot number thirty-four, containing two hundred and twenty acres and forty-four hundredths of an acre. Also lot number thirty-six, containing two hundred and forty acres. Also part of lot number thirty-one, bounded on the north, east, and south, by the north, east, and south lines of the lot, and on the west by lands owned by Albert Page, Ephraim Page, and Thomas Rathburn, containing ninety-two acres. Also part of lot number forty-two, bounded on the north, east, and south, by the north, east, and south lines of the lot, and on the west by lands owned by Albert Page, containing one hundred and thirty-four acres and sixty hundredths of an acre. Also lot number forty-three, containing two hundred and twenty-four acres and fifty hundredths of an acre. Also part of lot number forty-six, bounded on the south and east by the south and east lines of the lot, on the north by lands owned by John Greenman, and on the west by lands owned by Jacob Silsbe, containing ninety acres and sixty hundredths of an acre. Also part of lot number forty-one, bounded on the south and west by the south and west lines of the lot, on the east by lands owned by Samuel Swain, and on the north by lands owned by Lindsley Joslyn, containing seventy acres and sixty-seven hundredths of an acre. Also part of lot number forty-seven, bounded on the east and south by the east and south lines of the lot, on the west by the west line of the lot, and lands owned by William Merrick, and on the north by the north line of the lot, and lands owned by said William Merrick, containing one hundred and sixty-seven acres and twenty-five hundredths of an acre. Also lot number forty-eight, containing two hundred and thirty-seven acres and seventy hundredths of an acre. Also lot number forty-nine, containing two hundred and twenty-four acres and seventy-five hundredths of an acre. Also lot number fifty, containing two hundred and thirty-four acres and seventy-five hundredths of an acre. Also lot number fifty-two, containing two hundred and forty acres and twenty hundredths of an acre. Also part of lot number fourteen, bounded on the north, east, and west, by the north, east, and west lines of the lot, and on the south by lands owned by George Rockafellow and William R. Duryce, containing one hundred and twenty-five acres and fifty hundredths of an acre.

Also all that certain tract or parcel of land, situate, lying, and being in the town of Leicester, in the county of Livingston, and State of New York aforesaid, and being a part of the Tuscarora tract aforesaid, to wit, lot number *one*, bounded on the north, west, and south by the north, west, and south lines of the lot, and on the east by the Genesee river,

containing one hundred and fifty-seven acres; the above described pieces or parcels of land containing jointly about five thousand eight hundred and eighty-eight acres and ninety-three hundredths of an acre, be the same more or less; being all the unsold lands owned by the said Luke Tiernan on [the] Tuscarora tract aforesaid, and being a part of the same lands set apart to the said Luke Tiernan by a certain decree in partition in chancery, in the State of New York aforesaid, bearing date the eleventh day of December, in the year of our Lord one thousand eight hundred and twenty, in which the said Luke Tiernan was plaintiff, and Agnes Owen and others, defendants. Together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and all the estate, right, title, and interest therein, of the said parties of the first part; to have and to hold the same unto the said party of the second part, and to his assigns and their heirs forever, in trust, nevertheless, as hereafter expressed and declared. It is hereby expressly declared, that this conveyance is made upon the several trusts hereinafter specified and set forth, that is to say, that the said Charles H. Carroll shall proceed from time to time, and without unreasonable delay, to sell the aforesaid lands, in whole or in parcels to suit purchasers, at the best price or prices that may be reasonably obtained for the same. He shall receive upon all sales at least one sixth part of the purchase money, and give and take proper land contracts, by which the purchasers shall engage to pay the residue of the purchase money in equal annual instalments, the last of said instalments to be paid at a period of not exceeding five years from the first of January next, ensuing the date of such contract; and by which contract the said purchaser shall be bound to pay the interest annually upon such part of said purchase money as shall from time to time remain unpaid; he shall in no case convey until the purchase money, for the land to be conveyed, together with the interest upon the same, shall have been fully paid; the proceeds of such sales shall be disposed of and applied as follows, the said Charles H. Carroll shall retain, out of the monies arising from such sales, all taxes assessed and levied upon said lands, and all moneys paid for surveys, all premiums upon drafts, and all expenses of titles, and all other expenses incident thereto, from time to time, as the same may accrue, and shall be paid by him; he shall also retain, as a compensation for executing the trusts hereby created, a commission of five per cent. upon all sales, and of two and a half per cent. upon all collections; and the residue of such monies to be disposed of and applied as follows: He shall remit, from time to time, as the same shall be received, in bank checks or drafts on New York, Philadelphia, or Baltimore, to Alexander Neill, of Maryland, and payable to his order, of the first moneys arising from such sales, (after deducting the expenses and commissions aforesaid,) until he shall have remitted the sum of fifteen thousand dollars, to be paid by the said Alexander Neill to the creditors of the said Luke Tiernan, whose demands shall then have been ascertained; and if the demands so ascertained shall exceed the said sum of fifteen thousand dollars, the same shall be applied in part payment of each of

said demands, in the ratio that each of said demands respectively shall bear to the whole sum to be so applied; and after the said sum of fifteen thousand dollars shall be so remitted as aforesaid, the said Charles H. Carroll shall remit from time to time, as the same shall be received, to such person as shall be designated by the said Anne Tiernan, and in such manner as shall be by her designated, of the next monies arising from such sales, (after deducting the expenses and commissions aforesaid,) until he shall have so remitted the sum of twelve thousand dollars, which said sum of twelve thousand dollars is to be invested and applied by such person as shall so be designated by the said Anne Tiernan, for the sole and separate use of the said Anne Tiernan, and her heirs, forever, and without the control of the said Luke Tiernan, her husband.

And after the said sum of twelve thousand dollars shall so be remitted as aforesaid, the said Charles H. Carroll shall remit from time to time, as the same shall be received, in bank checks or drafts on New York, Philadelphia, or Baltimore, to Frederick Chatard, of Baltimore aforesaid, and payable to his order, of the next monies arising from such sales, (after deducting the expenses and commissions as aforesaid,) until he shall have so remitted as aforesaid the sum of four thousand four hundred and fifty dollars, together with interest thereon, to be computed from and after the first day of January, eighteen hundred and forty-one, at the rate of six per cent. annually, which said monies shall be invested by the said Frederick Chatard for the benefit of the said Luke Tiernan Brien, and his heirs; and in case of the death of the said Frederick Chatard, the said moneys shall be remitted to the said Alexander Neill in the manner herein provided to be by him invested as aforesaid, and after the last mentioned sum shall have been remitted as aforesaid, all the residue of the moneys arising from such sales (after deducting the expenses and commissions as aforesaid) shall be remitted by the said Charles H. Carroll from time to time, as the same shall be received, to the said Alexander Neill in the manner hereinbefore provided for the remission of the said sum of fifteen thousand dollars, and the same shall be applied by the said Alexander Neill to the payment of the debts due from the said Luke Tiernan to all the creditors of the said Luke whose demands shall then have been ascertained by the said Alexander Neill; and in case that the sum so to be applied shall be insufficient for the payment of all such demands, then and in this case the same shall be applied in part payment of each of said demands in the ratio that each of said demands respectively shall bear to the whole sum to be so applied to that object; and in case the said sum shall be more than equal to the payment of such demands, then and in that case the residue thereof shall be paid by the said Alexander Neill to the said Luke Tiernan, his heirs, executors, administrators, or assigns.

The said Charles H. Carroll shall annually render to the said Luke Tiernan an account of all sales made by him the current year, specifying the quantity of lands sold, the prices at which the same were sold, and the amount of moneys received on account of such sales. And the

said Charles H. Carroll, his heirs and assigns, are in no event to be responsible for the application and investment of the sums of money which shall from time to time be paid over by him to the said Alexander Neill, the said Frederick Chatard, or the person to be named as trustee by the said Anne Tiernan, or either of them. In case of the death of the said Charles H. Carroll before the *the* trusts hereby created shall be fully executed, then and in that case the said several trusts hereby created, and to be executed by the said Charles H. Carroll as hereinbefore provided, shall be executed by the said Alexander Neill. And in that event the said Alexander Neill is clothed and invested with all the power, rights, and authority hereinbefore conferred upon and invested in the said Charles H. Carroll. And the said Luke Tiernan doth hereby covenant and agree, to and with the said party of the second part, that the above granted premises, in the quiet and peaceable possession of the said party of the second part and his assigns, against every person lawfully claiming the whole or any part thereof, he will forever warrant and defend.

In witness whereof the parties of the first part have hereunto set their hands and seals the day and year first above written.

LUKE TIERNAN, [SEAL.]

her
ANNE ⋈ TIERNAN. [SEAL.]
mark.

Sealed and delivered in the presence of R. B. Taney, (the words "twenty-fourth" in the first line of the deed being first interlined.)

STATE OF MARYLAND, *City of Baltimore, to wit:*

On this 24th day of September, 1839, came before me Luke Tiernan and Anne his wife, to me known to be the persons described in, and who executed the aforegoing instrument, and acknowledged that they executed the same. And the said Anne, upon a private examination by me, separate and apart from her husband, acknowledged that she executed the same freely and voluntarily, and without any fear, threats, or compulsion, of her said husband.

R. B. TANEY,
Chief Just. Sup. Court of the U. States.

STATE OF NEW YORK,
Livingston county, Clerk's office, ss:

I, William H. Stanley, clerk of the said county, do hereby certify, that I have compared the foregoing with the original record remaining in my office, and that the same is a correct transcript therefrom, and of the whole of the said record; and that the said record was made on the eighth day of October, in the year one thousand eight hundred and thirty-nine, at 9 o'clock, a. m., in liber 22 of deeds, on pages 86, 87, 88, 89, 90, 91, 92, and 93.

In witness whereof I have hereunto subscribed my name, and affixed the seal of the court of common pleas, and of the said county, [L. S.] this thirtieth day of November, in year of our Lord one thousand eight hundred and thirty-nine.

W. H. STANLEY, *Clerk.*

Afterwards, to wit, on the twenty-six day of April, in the year of our Lord one thousand eight hundred and forty-four, the said John D. Murrell and the Bank of New Orleans, by their solicitors aforesaid, filed in said cause a petition in the words following, to wit:

Petition for leave to amend the bill.

MURRELL & THE BANK OF NEW ORLEANS
vs.
ALEXANDER NEILL. } In equity.

In the circuit court of the United States for the district of Maryland.

To the honorable the judges of the circuit court of the United States for the Maryland district.

The petition of the complainants in this cause humbly sheweth: That heretofore they have filed their bill therein, praying for certain relief, as thereby will appear, against the defendant aforesaid, who hath made answer to the same. And since the filing of said bill and answer, your petitioners have discovered that there are certain defects in their said bill which it is material to their interest that they should be permitted at this time to amend. That is to say: they have alleged in their said bill that a certain deed of trust was made by Luke Tiernan, deceased, in his lifetime, to the said Alexander Neill; whereas they have since discovered, and the fact is, that said deed was made by said Luke Tiernan and Anne, his wife, to a certain Charles H. Carroll, said Neill being only a cestuy que trust under the said deed, in which capacity, and not as trustee, he has received large sums of money from said Carroll, as your petitioners allege, which your petitioners say should be distributed by said Neill among the creditors of the said Luke Tiernan, according to the terms of said deed, and of which your petitioners allege that they are entitled to a proportional share, which said Neill refuses to pay to them.

And your petitioners find that it is likewise proper that their said bill should be amended by making parties defendants thereto the said Alexander Neill, in his capacity of executor of the said Luke Tiernan, together with William T. Somerville, his co-executor, so that your petitioners may have a full and complete discovery of the debts due by said Luke Tiernan's estate, and the amount which they are entitled to receive under the deed aforesaid. And your petitioners pray that they may be permitted to file their bill accordingly, to be amended as aforesaid; and they will, &c.

JOHN GLENN,
S. TEACKLE WALLIS,
Sols. for pet'rs.

Order granting leave to amend the bill.

Whereupon, the court here passed the following order, to wit:

It is this 7th day of May, 1844, ordered, that the plaintiffs or complainants have leave to amend their original bill as prayed, and that they pay the costs of such amendment.

U. S. HEATH, *District judge*

Afterwards, to wit, on the ninth day of May, in the year of our Lord one thousand eight hundred and forty-four, the said complainants, by their solicitors aforesaid, filed in the said cause an amended bill in the following words, to wit:

Amended bill.

To the honorable the judges of the circuit court of the United States, for the district of Maryland.

John D. Murrell, a citizen of the State of Virginia, and the Bank of New Orleans, whose stockholders are citizens of the State of Louisiana, for and on account of themselves and others, the creditors of Luke Tiernan, deceased, late a citizen of the State of Maryland, who having a right to join in this proceeding, may make themselves parties thereunto, contributing to the expense thereof, bring this their amended bill against Alexander Neill, of Hagerstown, and a citizen of the State of Maryland, and William T. Somerville, of Baltimore, likewise a citizen of the State Maryland.

And thereupon your orators complain and say, that the said Luke Tiernan in his lifetime, was a partner in the mercantile house of Luke and Charles Tiernan, in the city of Baltimore, and also house of Tiernan, Cuddy and Company, in the city of New Orleans, and the two said mercantile houses or firms did become indebted unto your orators, in and about the sum of one hundred thousand dollars, to each of your orators, respectively; and being so indebted, the two said houses, and each of them, did separately become unfortunate in business, and did at last utterly fail to meet their engagements, remaining indebted to your orators in and about the respective amounts above set forth, which are as yet due to your orators and unpaid, as they are ready, at the proper time, to prove.

And your orators further say, that the said Luke Tiernan being so indebted, as a member of the two said firms, on or about the twenty-fourth day of September, one thousand eight hundred and thirty-nine, did make and execute, together with Anne Tiernan, his wife, a certain deed of trust unto a certain Charles H. Carroll, of the State of New York, of certain real estate, lying in New York aforesaid, in trust, among other things, to sell and dispose of the same, and pay over unto the said Alexander Neill the sum of fifteen thousand dollars, part of the proceeds thereof to be paid by the said Neill to those of the creditors of him, the said Tiernan, whose demands should at the time of such payment have been ascertained, and if the demands so ascertained should exceed the sum of fifteen thousand dollars, then rateably among such creditors, according to the amounts of their respective demands, proportion to the whole sum to be divided.

And your orators further say, that the said Luke Tiernan, afterwards, to wit, on or about the ninth day of November, eighteen hundred and thirty-nine, departed this life utterly insolvent, leaving the aforesaid Alexander Neill and a certain William T. Somerville, his executors of his last will and testament, who have duly received letters as such from

the orphans' court of Baltimore county, as will appear by the paper herewith filed, marked exhibit B, which your orators pray may be taken as a part of this their bill.

And your orators, further referring for greater certainty, as to the contents of the deed aforesaid, to the transcript thereof, marked A, filed by the said Neill with his answer to the original bill of your orators, and praying that said transcript may be taken as a part of this their bill, do charge and say, that the said Neill hath, under the said deed, from time to time, received from said Carroll large sums of money, amounting to a greater part, if not the whole, of the said fifteen thousand dollars, in trust to pay out and distribute the same among the creditors of the said Luke Tiernan, according to the provisions aforesaid of said deed; the said moneys being part of the proceeds of the lands so conveyed, and having been paid over to the said Neill by the said Carroll, under and in pursuance of and for the purposes of said deed, and the clause thereof herein before specially referred to.

And your orators further complain and say, that since the execution of the deed aforesaid, as they believe, the whole of the individual debts of said Luke Tiernan have been fully paid, and the whole of the other members of the firms of Luke and Charles Tiernan, and Tiernan, Cuddy & Company, have become, and are, or have died, utterly insolvent; so that your orators and others, the creditors of said Luke Tiernan on account of his partnership liabilities, have no recourse, save against the funds, as above mentioned, received by the said Alexander Neill, and now in his hands; but the said Neill, hitherto, hath altogether refused to take any measures for the distribution of the said funds, or the ascertainment of the demands against the said Luke Tiernan, so that the same be paid according to the force and effect of the said deed of trust aforesaid, and the provision thereof, to which your orators have specially referred; in remedy whereof, and that they may have such share of said funds as may be coming and due to them under the deed aforesaid, and that said Neill may be compelled to discharge the duties by such deed, and his acceptance of said trust imposed on him, your orators say, that they are entitled to the interposition of this court. To the end, therefore, that the said defendants may, if they can, shew why your orators should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they [are] respectively required to answer, that is to say:

1. Whether the said Luke Tiernan was not a member of the firms of Luke & Charles Tiernan, and Tiernan, Cuddy & Company; and whether said firms did not fail and become, they and all the members thereof, utterly insolvent, owing about the sum of one hundred thousand dollars to each of these complainants.

2. Whether the said Luke Tiernan did not make and execute the

deed aforesaid to Charles H. Carroll, at the time set forth in this bill, and in the manner and form, and to the effect likewise herein described; and whether the copy herein referred to is not a true copy of said deed.

3. Whether said Luke Tiernan did not afterwards die, as is herein set forth, leaving the defendants his executors; and whether his individual debts have not all been paid.

4. Whether said Neill has not received from said Carroll, under said deed, large sums of money, and to what amount; and whether he has not refused to distribute said moneys according to the provisions of said deed, as herein set forth; and what is the present situation of said funds.

5. Whether these complainants are not creditors of said Luke Tiernan, in his partnership capacity, to the amount of about one hundred thousand dollars each, and entitled to a distributive share of his assets under the deed aforesaid.

6. Whether said Neill has made proper and diligent efforts to obtain from said Carroll the whole of the sum of fifteen thousand dollars, according to the provisions of the deed aforesaid.

And that these, your orators, may have all such further and proper relief as their case may require. May it please your honors to cause the writ of subpœna to be issued, directed to the said Alexander Neill and William T Somerville, commanding them to appear and answer the premises, and to abide by such decree as your honors may pass therein; and they will ever, &c.

JOHN GLENN,
S. TEACKLE WALLIS,
Solicitors for complainants.

Note.—The defendant, Alexander Neill, is required to answer all the interrogatories numbered in said bill.

The defendant, William T. Somerville, is required to answer the interrogatories numbered respectively 1, 2, 3, and 5.

JOHN GLENN,
S. T. WALLIS,
Complainants' solicitors.

Afterwards, to wit, on the fifteenth day of May, in the year of our Lord one thousand eight hundred and forty-four, the Alexander Neill, by his solicitor aforesaid, filed in said cause a petition and exhibit, in the words following, to wit:

Petition of Alexander Neill.

JOHN D. MURRELL AND THE BANK OF NEW ORLEANS,
vs.
ALEXANDER NEILL.

Equity side of the circuit court of the United States for the fourth circuit.

To the honorable the judges of the circuit court of the United States, for the fourth circuit, the petition of Alexander Neill, the defendant in the above cause, respectfully shews:

That, since the filing of his answer in the said cause, he has received

additional sums of money from Charles H. Carroll, as per the statement herewith filed, marked exhibit A, which it is prayed may be taken as a part of this petition, and by which it will appear that your petitioner has received in all, from said Carroll, the sum of fifteen thousand dollars; and that said sum has been increased by premiums on New York drafts, and by interest on nine thousand dollars, part thereof, heretofore invested by your petitioner, to the sum of sixteen thousand four hundred and forty dollars and fifteen cents, on the 22d day of April, 1844

Your petitioner further states, that by the terms of the deed under which the said money has been paid to him, a copy of which is filed with his answer in this cause, and is prayed to be taken as part of this petition, it became his duty, when the sum of fifteen thousand dollars had been paid to him by said Carroll, to distribute the same among the creditors of the late Luke Tiernan, then ascertained; and that, ever since he received the said sum, he has been, and is now, willing and desirous to distribute the same among said creditors, but is unable to ascertain with certainty who are the creditors entitled, and distribute said money among them with safety to himself, except by the aid and under the direction of a court of equity. And your petitioner is advised that, the jurisdiction of this honorable court over the fund in his hands having attached, by reason of the proceedings heretofore had in this cause, it is proper that he should apply to your honors to distribute said fund among those who may be entitled thereto.

Your petitioner further states, that a suit is pending in the chancery court of the State of New York, against C. H. Carroll and others, and your petitioner, in which he has been compelled to pay certain costs; and that he has paid to his counsel in this cause one hundred dollars for professional services, which appears more fully by the statement marked A, herewith filed, and for all which he craves an allowance out of the funds in his hands. He also states that he has had much labor and vexation in the collection of this money, and the management of the business connected with it; that he has been involved in two suits requiring his attention, and has been compelled to visit the city of New York, and Washington city, and to conduct a voluminous correspondence; that he has used every effort to hasten the payment of the money by Carroll, and that, as soon as the requisite sum was received by him, he has forthwith come into this court to ask that it may be distributed among those who are entitled; and, under these circumstances, he prays that the court will allow him a liberal commission for his services in the matter.

Your petitioner further states, that he is ready to make such disposition of the said money as this honorable court may direct; and he respectfully prays that this court will pass an order, to be published in such papers, and for such time as to the court may seem right, directing the creditors of the late Luke Tiernan, entitled under said deed, to file their claims, duly authenticated, with the clerk of this court, on or before a certain day in said order to be named; and that, after said day, this

court will proceed to distribute said fund among such creditors, if any, as may be entitled thereto; and your petitioner will ever pray, &c.

J. NELSON,
J. N. STEELE,
For petitioner.

STATE OF MARYLAND,
Baltimore city, ss:

On this 4th day of May, 1844, before the subscriber, a justice of the peace in and for the city aforesaid, personally appeared Alexander Neill, and made oath that the matters stated in the aforegoing petition are true, to the best of his knowledge and belief.

Sworn before T. HANSON BELT.

Exhibit A, filed with the petition of A. Neill.

Exhibit A, referred to in the above petition.

Amount of moneys received by Alexander Neill from Charles H. Carroll, under the deed of trust executed to him by L. Tiernan, and remitted to Neill as receiver.

1841.				
March 1,	Draft on the Merchants bank N. York			$3,513 17
	Premium received on same			105 00
Oct. 18,	Draft on New York			2,500 00
	Premium received on same			87 50
1842.				
Feb'y 22,	Draft on New York			2,000 00
	Ditto " do. do.			974 50
	Premiums received on said drafts			96 65
1843.				
June 22,	Draft on New York			800 00
	Draft on Livingston county, New York		1100 00	
	Less discount on said draft		13 10	
				1,086 90
1844.				
Jan'y 9,	Two checks on the bank of New York			2,500 00
April 1,	Draft on New York			1,109 00
22,	And with this sum received this day			512 83
	Interest on nine thousand, invested on the 26th Feb. 1842, to April, 1844—2 ys. 1 mo. 26 ds.			1,164 00
				$16,440 55

Whereupon the court here pass the following order, to wit,

Order of notice to creditors to file their claims.

Ordered, this 18th day of May, 1844, by the circuit court of the United States for the fourth circuit, sitting in equity, that Alexander Neill give notice, by publication once a week for four successive weeks

before the first day of July next, in the American and the Republican newspapers, printed in Baltimore city, and in the Picayune printed in New Orleans, requiring the creditors of the late Luke Tiernan, and all other persons interested in the funds received by the said Alexander Neill, under the deed of trust executed by the said Luke Tiernan to Charles H. Carroll, and dated September 24th, 1839, to file their claims, properly authenticated, with the clerk of this court, on or before the first day of August next.

R. B. TANEY,
U. S. HEATH.

Afterwards, to wit, on the twenty-ninth day of June, in the year of our Lord one thousand eight hundred and forty-four, the said Alexander Neill and William T. Somerville, by their solicitors, filed in the said cause their answer to the amended bill, in the following words, to wit:

Answer of A. Neill and William T. Somerville to amended bill.

The answer of Alexander Neill and William T. Somerville, of the State of Maryland, to the amended bill of complaint of John D. Murrell and the Bank of New Orleans, on the equity side of the circuit court of the United States, for the fourth circuit, exhibited.

These respondents, now and at all times reserving to themselves all manner of benefit of exception to the many errors, uncertainties, and imperfections in said bill contained, for answer thereunto, or unto so much thereof as they are advised it is material for them to answer, say:

They have heard that Luke Tiernan was a partner of the firm of Luke and Charles Tiernan, of New Orleans, and that although he was not originally a partner of the firm of Tiernan, Cuddy & Co., yet that he had by subsequent acts become liable as a partner in said last mentioned firm; but of these matters they have no personal knowledge, and therefore leave the complainants to such proof thereof as they may be advised to produce.

Further answering, these respondents say, that as to the indebtedness of the firms of Luke and Charles Tiernan, and Tiernan, Cuddy & Co., to the complainants, they have no personal knowledge, having only understood from the complainants that they were creditors, and therefore they neither deny or admit the same, but leave the complainants to prove the claims, if any, which they may have against said firms respectively; these respondents believe, and therefore admit, that the said commercial houses of Luke and Charles Tiernan and Tiernan, Cuddy & Co., did become unfortunate in business, and have failed to meet their engagements. These respondents also admit that the said Luke Tiernan did, on the fourth day of September, eighteen hundred and thirty-nine, together with Anne Tiernan his wife, execute the deed of trust referred to in said bill, a copy whereof, marked A, was filed by the respondent Neill with his answer to the original bill in this cause, and which these respondents admit to be a true copy thereof, and pray may be taken as part of this answer. They also admit that the said Luke Tiernan de-

parted this life on or about the ninth day of November, eighteen hundred and thirty-nine; and by his will, duly executed, appointed these respondents his executors; and that letters testamentary have accordingly been granted to them by the orphan's court of Baltimore county, in the State of Maryland, as stated in said amended bill; but they do not admit, because they do not know, that the said Luke Tiernan died utterly insolvent; and these respondents also admit that one of them, viz, Alexander Neill, has received from Charles H. Carroll, the grantee in the deed above referred to, to be distributed under the provisions of said deed, the sum of fifteen thousand dollars, as charged in said bill, and they refer to a certain petition and exhibit heretofore filed in this cause by the said Neill, and which they pray may be taken as part of this answer, to shew the time and manner of the receipt of said sum of money by the said Neill.

These respondents do not admit that the individual debts of the said Luke Tiernan have been fully paid, because outstanding individual claims against him, to the amount of about ten thousand dollars, have been made known to them. These respondents have no knowledge of, and therefore do not admit the insolvency of, any of the members of the said firms of Luke and Charles Tiernan, and Tiernan, Cuddy & Co., except that they have understood that Charles Tiernan has applied for and obtained the benefit of the insolvent laws of Maryland; but these respondents have been informed by said Charles Tiernan, and therefore so charge, that he, the said Charles Tiernan, was appointed, by a competent tribunal in the State of Louisiana, syndic, for the purpose of collecting and administering the assets of the firm of Tiernan, Cuddy and Co.; and that there are now in the said State assets of the said firm to a very large amount, consisting of lands, debts, stocks, and houses; and these respondents deny that the complainants, if they are creditors of Luke Tiernan at all, have a right to come in, under the deed herein before referred to, until they have exhausted their remedy against the said Charles Tiernan, surviving partner and syndic as aforesaid, and absorbed the assets of said firm of Tiernan, Cuddy & Co. And these respondents also state that they are informed and believe, and therefore so state, that a certain Calvin Tate and a certain Washington Keyes were partners of the said Tiernan, Cuddy & Co., and are still living; and that the remedy of the complainants should be exhausted against them before proceeding against these respondents or either of them.

These respondents further answering say, they are advised that it is not competent for this honorable court to decree in favor of the complainants, in the present proceeding, for the want of proper parties thereto; that the heirs of the said Luke Tiernan, Frederick Chatard, and Charles H. Carroll, are necessary parties thereto. These respondents further state, that proceedings have been instituted, by persons professing to be creditors of Luke Tiernan, in the courts of the State of New York, against the above named Charles H. Carroll, as the personal representative of Luke Tiernan, deceased, to reach the funds and estate arising under, and conveyed by, the deed hereinbefore referred

to, and which proceedings are still undisposed of and pending therein.

These respondents, further answering the specific interrogatories contained in said bill, say—

1st. That they have no personal knowledge as to whether Luke Tiernan was or was not a member of the firms of Luke and Charles Tiernan, and Tiernan, Cuddy & Co.; that they have understood that said firms had failed, but do not know whether said firms, and all the members thereof, are utterly insolvent; nor do they know whether said firms owed the sum of one hundred thousand dollars, or thereabouts, to each of the complainants.

2d. That Luke Tiernan did make and execute the deed referred to in said bill, at the time, in the manner, and to the effect in said bill described.

3d. That Luke Tiernan did die, as set forth in said bill, leaving these respondents his executors, and that all his individual debts have not been paid, as these respondents believe.

5th. That they do not know, and therefore cannot say, whether the complainants are or are not creditors of said Luke Tiernan, in his partnership capacity, to the amount of one hundred thousand dollars each, or whether they are entitled to a distributive share of his assets under the deed aforesaid.

And these respondents further answering say, they are advised, and therefore say that, even if said complainants ever had any causes of action against the said Luke Tiernan, for or concerning any of the matters in said bill mentioned, which these defendants do not admit, the said causes of action did accrue and arise above three years before the filing of said bill; nor did these respondents, or either of them, at any time within three years next before the filing of said bill, promise or agree to come to any account for, or to make satisfaction, or to pay any sum or sums of money, for or by reason of the said matters charged in said bill.

And these respondents, relying upon the matters herein before stated as a sufficient answer and defence to the said bill of complaint, pray to be hence dismissed, with their reasonable costs in this behalf sustained.

J. NELSON,
J. NEVETT STEELE,
Solicitors for defendants.

STATE OF MARYLAND:

On this 28th day of June, eighteen hundred and forty-four, before the subscriber, commissioner to take depositions of the circuit court of the United States for the district of Maryland, personally appeared Alexander Neill and William T. Somerville, and made oath on the Holy Evangely of Almighty God, that the matters stated in the aforegoing answer are true to the best of their knowledge and belief.

Sworn before JNO. HANAN,
Com. cir. crt. U. S. for the district of Md.

Afterwards, to wit, on the seventeenth day of July, in the year of our Lord eighteen hundred and forty-four, the said complainants, by

their solicitors aforesaid, filed in the said cause their replication to the answer of defendants in the following words, to wit:

To the honorable the judges of the circuit court of the United States for the district of Maryland.

Replication.

The replication of John D. Murrell and the Bank of New Orleans, complainants, to the answer of Alexander Neill and William T. Somerville, defendants.

These repliants, for replication to the said answer, say that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of said defendants is uncertain, untrue, and insufficient to be replied to by these repliants; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true.

All which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct, and humbly prays, as in and by his said bill he hath already prayed, &c.

JOHN GLENN,
S. T. WALLIS,
Solicitors for repliants.

Afterwards, to wit, on the sixteenth day of November, in the year of our Lord one thousand eight hundred and forty-four, the complainants aforesaid, by their solicitors aforesaid, filed in said cause a petition in the words following, to wit:

Petition for further time to take testimony.

J. D. MURRELL and the Bank of New Orleans, vs. NEILL & SOMERVILLE. } In equity.

In the circuit court U. S., Nov. term, 1844.

To the honorable the judges of the circuit court of the United States, in and for the district of Maryland.

The petition of the complainants in the above cause humbly sheweth, that by and through the indisposition of both their counsel, they have been prevented from taking testimony material to support the allegations of their bill within the time prescribed by the rules of this court, all of which they are prepared to prove to your honors by the affidavit of their said counsel, if need be; wherefore, they pray the court to enlarge the time within which they may be allowed to examine their witnesses, so that such testimony may be taken upon the interrogatories herewith filed, on commissions to be issued to the commissioner in this city, and also in the city of New Orleans, and that the same may be read in evidence; and they will, &c.

JOHN GLENN,
S. T. WALLIS, *for Petr's.*

Whereupon the court here pass the following order, to wit:

Order of court granting further time to take testimony.

It is this 16th day of November, 1844, ordered, that the time be enlarged, and the petitioners be allowed to examine their witnesses under a commission to be issued for that purpose as prayed, unless cause to the contrary be shewn on Thursday, the 21st day of November, (ins't,) provided notice be served on the defendants or their solicitors, on or before Monday the 18th instant.

U. S. HEATH.

I admit service of a copy of the above order on me, the 16th day of November, 1844.

J. NEVETT STEELE, *for Deft's.*

Afterwards, to wit, on the twenty-seventh day of November, in the year of our Lord one thousand eight hundred and forty-four, the court here pass the following order, to wit:

J. D. MURRELL and Bank of New Orleans
vs.
NEILL & SOMERVILLE.

Circuit court, November term, 1844.

Order of court to issue comm'n to Robert Mott, of New Orleans, and Jno. Carrere, of the city of Baltimore.

It appearing to the court that notice of the order of this court of the 16th instant has been given, and no cause having been shewn to the contrary, it is thereupon, this 27th day of November, 1844, ordered by the court that a commission be issued by the clerk of this court to Robert Mott, of the city of New Orleans, with authority to take the testimony in pursuance of the 67th rule, upon interrogatories, of such witnesses as may be brought before him by the parties respectively; and it is further ordered, that a commission, with like authority, be issued to John Carrere, of the city of Baltimore.

R. B. TANEY,
U. S. HEATH.

And, in pursuance of the said order, a commission was issued to Robert Mott, of the city of New Orleans, in the words and of the tenor following, to wit:

Commission to New Orleans.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To Robert Mott, of the city of New Orleans, esquire, greeting:

Be it known, that you are appointed a commissioner to examine evidences in a cause now depending in the circuit court of the [L. S.] United States for the fourth circuit, in and for the Maryland district, (on the equity side of the said court,) between John

D. Murrell and the Bank of New Orleans, complainants, and Alexander Neill and William T. Somerville, are respondents; therefore, you are requested, having first taken the oath hereunto annexed, and also administered the annexed oath to the person whom you shall appoint as clerk to attend the execution of this commission, that at such time and place as to you shall seem convenient, you cause to come before you all such evidences as shall be named or produced to you by either the plaintiff or defendants, and that you examine them upon their corporal oaths, to be by you administered upon the Holy Evangely of Almighty God, touching their knowledge or remembrance of any thing that may relate to the cause aforesaid; and having reduced the depositions of the witnesses so taken by you into writing, you send the same, with this commission, closed under your hand and seal, to the said circuit court, with all convenient speed. Witness the honorable Roger B. Taney, chief justice of our supreme court, the first Monday in December, in the year of our Lord one thousand eight hundred and forty-four.

S. T. W. J. N. S. Issued 3d December, 1844.

THO. SPICER, *Clerk circuit court.*

Commissioner's oath.

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the commission hereunto annexed, upon the interrogatories now, or which may hereafter, before the said commission is closed, be produced to, and left with, you by either party, so help you God. ROB. MOTT.

Sworn to and subscribed before me, this 26th Dec., 1844.

A. P. JACKSON.

(*Clerk's oath.*)

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down, and transcribe the depositions of all and every the witness and witnesses produced before, and examined by, the commissioner named in the commission hereunto annexed, as far forth as you are directed and employed by the said commissioner to take, writ down, and transcribe the said depositions, or any of them. So help you God.

In the circuit court of the U. States, sitting in equity.

JOHN D. MURRELL and the Bank of New Orleans
vs.
ALEXANDER NEILL and William T. Somerville.

Complainants' interrogatories.

Interrogatories to be propounded on the part of the complainants to witnesses to be examined under a commission.

1. Did you know the late firms of Tiernan, Cuddy & Co., and

Luke & Charles Tiernan? If yea, who composed said firms severally?

2. Were said firms of Luke & Charles Tiernan, and Tiernan, Cuddy & Company declared insolvent, and unable to pay their debts? If so, when was this done?

3. Are any of the partners in the two firms aforesaid, and who, now living? If yea, are they or not insolvent? State also, if within your knowledge, whether the partners in the said firms, who are deceased, did or did [not] die insolvent.

JOHN GLENN,
S. TEACKLE WALLIS,
For Complainants.

True copy:

THO. SPICER, *Clk. cir. ct.*

On the equity side of the circuit court of the U. S. for the Maryland district.

JOHN D. MURRELL and the Bank of New Orleans
vs.
ALEXANDER NEILL and William T. Somerville.

Cross interrogatories.

Cross interrogatories to be propounded to the witnesses examined on the part of the complainants.

1st. If you answer to the first interrogatory of the complainants, that you do know who composed the firms therein mentioned, state how you know the same, and from whom your knowledge was obtained.

2d. If you say, in answer to complainants' second interrogatory, that said firms were declared insolvent, state by whom, in what manner, and by what proceeding they were so declared. State, if you know, what the assets of the firm of Tiernan, Cuddy & Co. consist of, and what is the amount of said assets.

3d. If, in your answer to the complainants' third interrogatory, you say that any of the said partners of said firm of Tiernan, Cuddy & Co. are now living and insolvent, or have died insolvent, state fully the sources of your knowledge on the subject.

J. NELSON,
J. N. STEELE, *for defts.*

True copy:

THO. SPICER, *Clk. cir. ct.*

THE UNITED STATES OF AMERICA,
Eastern district of Louisiana, ss:

Evidence of Michael Cuddy.

Be it remembered, that on this thirty-first day of December, in the year of our Lord one thousand eight hundred and forty-four, I, Robert Mott, commissioner, under and by virtue of the annexed commission,

caused Michael Cuddy, who was named to me by the counsel of the plaintiffs as a witness in the cause wherein John D. Murrell and the Bank of New Orleans are complainants, and Alexander Neill and William T. Somerville are respondents, in the circuit court of the United States, for the 4th circuit and Maryland district, and after having sworn him on the Holy Evangely of Almighty God to tell the truth, and the whole truth, propounded the interrogatories annexed to said commission to him, which he answered as follows, viz:

1st. I did know the late firms of Tiernan, Cuddy and Co., and Luke & Charles Tiernan; the first named firm was composed of Luke Tiernan, Charles Tiernan, Calvin Tate, and James McG. Cuddy; and the other firm was, I believe, composed of Luke and Charles Tiernan.

2. I do not know that said firms, or either of them, were legally declared insolvent and unable to pay their debts.

3. Some of the partners of said firms are now living, Calvin Tate and Charles Tiernan being alive; Luke Tiernan I believe to be dead, as I know James McG. Cuddy to be. I have heard that Calvin Tate had proceeded in bankruptcy, but I do not know, and cannot testify to this fact legally; and Charles Tiernan is reputed to be insolvent; the firm of Tiernan, Cuddy & Co. failed in December, 1835, for a large sum of money, much of which is still unpaid; James McG. Cuddy died insolvent, and I do not know whether Luke Tiernan died insolvent or not.

Cross examination.

Answer to cross interrogatories.

1. Having answered the first chief interrogatory in the affirmative, I state that I derive my knowledge from having been a clerk in the house of Tiernan, Cuddy & Co., from the general business of the concern, and the representations of the partners of that house, who resided in, or came to New Orleans, viz., Calvin Tate, James McG. Cuddy, and Charles Tiernan.

2. Not having answered the 2d chief interrogatory in the affirmative, it is unnecessary to answer the first part of this; to the last part of it I say, that there never having been, to my knowledge, a statement of the assets of the firm, and it having been some years since I had access to the books of the concern, it is impossible for me to tell precisely of what the assets consisted, or the amount of them; they were thought to be about five hundred thousand dollars. I do not know what they now amount to, and I believe they have always consisted of notes and bills of exchange and open accounts, some secured by mortgage and some not secured at all.

3. After the failure of the firm of Tiernan, Cuddy & Co., the debts of which are in a great measure unpaid, Charles Tiernan was reputed insolvent. I do not know whether he is insolvent of my own knowledge. Calvin Tate is said to be a bankrupt, and Luke Tiernan is reported to have died insolvent. I cannot testify to the insolvency of any of these parties, but I know that James McG. Cuddy, the other partner

of that house, died insolvent, and in a great measure, if not entirely, his insolvency was created and continued by the failure of the firm of Tiernan, Cuddy & Co.; and I know these facts from intercourse and connexion with the parties, and the circumstances of Mr. Cuddy were particularly known to me from his being a connexion, and his representations, and my own examination into his affairs; and further this deponent sayeth nothing.

MICHAEL CUDDY.

Sworn to, and subscribed to, before me, this 31st day of December, 1844.

ROB. MOTT, *Com'r.*

I, Robert Mott, commissioner named in the annexed commission from the United States circuit court for the fourth circuit, Maryland district, in the cause of John D. Murrell and the Bank of New Orleans against Alexander Neill and William T. Somerville, hereby certify, that I appointed no clerk, but propounded the interrogatories annexed to the said commission to Michael Cuddy, the witness, and reduced his answers to writing myself, and that he signed and swore to the same in my *my* presence, on the 31st of December, 1844.

In testimony whereof, I hereunto sign my name, and affix my seal, this thirty-first day of December, *of* in the year of our Lord one thousand eight hundred and forty-four.

ROBERT MOTT, *Commissioner*. [SEAL.]

Whereupon the New Orleans and Carrollton Railroad Company and Joseph Fowler, jr., and others, filed in said cause their petition, in the words following, to wit:

JOHN D. MURRELL and the Bank of New Orleans
vs.
ALEX. NEILL & William T. Somerville.

Petition to refer the papers to the master in chancery.

To the honorable the judges of the circuit court of the United States for the fourth circuit, sitting in equity.

The petition of the New Orleans and Carrollton Railroad Company, Joseph Fowler, jr., Cornelius F. De Kuyper, and Alexander Brown and Sons, respectfully shews, that, by an order of your honorable court in the above case of the 18th of May last, 1844, the said Alexander Neill was directed to give notice to the creditors of Luke Tiernan, and all other persons interested in the funds received by the said Alexander Neill, under the deed of trust mentioned in the proceedings in said cause, to file their claims, properly authenticated, in your honorable court, on or before the first August last. That, under said order, your petitioners and others have filed their claims, seeking to be allowed their proportion of the funds in the hands of the said Neill for distribution under the order of your honors.

Your petitioners now pray, that, by an order of your honors, the case

may be referred to John Carrere, master in chancery of your honorable court, to report the claims filed under and in pursuance of said order of the 18th of May.

BROWN & BRUNE,
For Fowler, De Kuyper, and Brown & Sons.
WM. F. FRICK,
For New Orleans and Carrollton Railroad Co.

Thereupon the court here pass the following order, to wit:

JOHN D. MURRELL and the Bank of New Orleans
vs.
ALEXANDER NEILL and William T. Somerville. } In equity.

In the circuit court of the United States for the fourth circuit, in and for the Maryland district.

Order of court referring the papers to J. Carrere, master in chancery.

Ordered by the court, this fifteenth day of November, 1844, that this case be referred to John Carrere, esq., as auditor to examine and report upon the claims filed in this case under and in pursuance of the order of the 18th of May last, heretofore passed by this court.

R. B. TANEY,
U. S. HEATH.

And now, on this third day of November, in the year of our Lord eighteen hundred and forty-five, John Carrere, esquire, the master in chancery to whom the papers in this cause were referred, made his report, in the words following, to wit:

JOHN D. MURRELL and al.
vs.
ALEXANDER NEILL et al. } In equity.

In the circuit court of the United States for the 4th circuit, in and for the district of Maryland, as a court of equity.

Master's report.

To the honorable the judges of the circuit court of the United States for the fourth circuit, in and for the district of Maryland, sitting as a court of equity.

The undersigned begs leave to report, that, in pursuance of the order passed in the above cause on the 15th day of November, 1844, referring the above cause to him as auditor, he appointed a time and place for proceeding to examine and report upon the claims filed in the said case, and gave notice thereof to the solicitors of the parties; that on the day so appointed, and on various other days, the solicitors of the parties attended before him, and then and there he proceeded to take the examination of several witnesses, whose depositions are herewith returned; that he has carefully examined the papers and claims filed in the said case, and has stated the said claims with interest to the 3d October, 1843, the day of filing the bill.

The undersigned has stated two accounts, one marked A, and the other B, by the former of which (acct. A) he has distributed the funds in court, after allowing a commission of eight per cent. to the trustee, and his expenses as by his account filed with his petition, and the costs of suit, &c., among the individual creditors of Luke Tiernan, such distribution being, in his opinion, the proper one under the provisions of the deed of trust. Account B he has stated under instructions, by which the funds are distributed indiscriminately among the individual and copartnership creditors of Luke Tiernan.

He further reports, that claim No. 6 is an account against Luke Tiernan as co-security on a bond for money paid by the executors of William Jenkins, deceased, the other security; but there is no evidence of the existence of such a bond, or that the claimants are the executors of said Jenkins. In claim No. 9 there is no certificate that the person before whom the affidavit was made was a judge at the time. In numbers 16, 20, and 23, the notes upon which the claims rest, have not been filed.

All of which is respectfully submitted.

JOHN CARRERE, *Auditor.*

In the circuit court of the United States for the 4th circuit, in and for the district of Maryland.

JOHN D. MURRELL & THE BANK OF NEW ORLEANS
vs.
ALEXANDER NEILL & others.

Deposition of William T. Somerville.

Depositions of witnesses taken before the undersigned, appointed auditor in the above cause, as follows:

William T. Somerville, sworn and examined by John Glenn, esq., on the part of the Bank of New Orleans, John D. Murrell, and other creditors.

The said deponent says, that all the real estate of Luke Tiernan, deceased, in the State of Maryland, has been sold, and the proceeds paid over, except about six or seven thousand dollars. He thinks, but cannot say positively, that the amount of outstanding debts due the estate of Luke Tiernan, and the stocks on hand, is about ten thousand dollars, or more. The said debts are due from persons living out of the State. There is real estate without the State of Maryland belonging to the estate of said Luke Tiernan, not included in the deed to Charles H. Carroll, filed in this cause; part is in New Orleans, part in Kentucky, Tennessee, and Arkansas.

Deposition of James C. Barry.

James C. Barry, sworn and examined by Mr. Glenn on behalf of the complainants, and other creditors represented by him.

The deponent says, that he was a clerk of Luke Tiernan & Son, of the city of Baltimore, and it was understood that Luke Tiernan was a

member of the commercial firm of Tiernan, Cuddy & Company, of New Orleans.

The firm of Luke Tiernan & Son, of Baltimore, was dissolved before the death of Luke Tiernan. Luke Tiernan died about the tenth of November, eighteen hundred and thirty-nine. He cannot say whether Luke Tiernan & Son dissolved partnership before 1836. There was a dissolution of Tiernan, Cuddy & Company, and Luke Tiernan & Son, twelve months before its publication. There was a dissolution which they did not publish. The old gentleman (Luke Tiernan) resolved upon the dissolution at the time of the publication, and had it published.

The deponent adds, that the account now shewn him of Sally Ann Lowry was made out by him, and he was the clerk at the time of Charles Tiernan, who carried on business as Luke Tiernan & Son. The dissolution of Luke Tiernan & Son took place a year or more before said account was made out.

Luke Tiernan and David Williamson were the trustees or guardians of said Sally Ann Lowry, and the trust estate was invested in the Farmer's Bank of Maryland, at Annapolis; and whenever the dividends were declared, Mr. Luke Tiernan gave orders for them in favor of Luke Tiernan & Son, as her agent; and in April, 1839, deponent received the order for the last dividend in said account from Luke Tiernan, and went to the Union Bank, and deposited it to the credit of Luke Tiernan & Son. Charles Tiernan was then the only member of said firm.

Deponent states in explanation, that the partnership of Tiernan, Cuddy & Company, was entered into between Charles Tiernan and James McGilley Cuddy, under the firm of Tiernan, Cuddy & Company, and, as well as his memory now serves him, the original partnership articles were signed by Charles Tiernan and James McGilly Cuddy. [Mr. Glenn objects to the above statement of the witness, the articles not being produced, and the statements being the voluntary statements of the witness.]

The witness further says, that the advertisement of dissolution of Luke Tiernan & Son, was signed by Luke Tiernan and by Charles Tiernan, and the dissolution of the partnership in New Orleans was signed by Luke Tiernan & Son, James McGilley Cuddy, and Calvin Tate.

Deposition of Charles Tiernan.

Charles Tiernan, sworn and examined by Mr. Glenn for the complainants and other creditors represented by him.

The witness says, that the firm of Tiernan, Cuddy & Co. was indebted to the Bank of New Orleans in the sum of forty-one thousand two hundred and sixty-five dollars forty-one cents, on the first of March, 1839, agreeably to a settlement made on that day; that by an arrangement entered into between Mr. Hodge (President of the Bank) and himself, in March, 1839, it was understood that a judgment should be

given by deponent's father, in Baltimore, for the above amount, payable in six semi-annual instalments, commencing the first of September, 1839, and upon perfecting this arrangement the Bank of Orleans was to release an attachment that had been taken out by the bank against the assets and debts due to Tiernan, Cuddy & Co., in Mississippi, and was to deliver up to deponent all paper of Tiernan, Cuddy & Co. held by the bank. This arrangement met the full concurrence and approbation of deponent's father; he merely suggested that an alteration in the time of payments should be made, making the instalments due and payable first of January and July in each year, in which change the bank acquiesced. The arrangement would have been carried into effect, and they only waited the arrival of Mr. Hodge in Baltimore, which they were advised would be early in October, 1839. Mr. Hodge abandoned his visit to the North; and the subsequent decease of his father precluded the arrangement from being made.

The original letters of Luke Tiernan to deponent, of the 8th of December, 1838, and 11th March, 1839, were left by the deponent in the counting-house of Luke Tiernan & Son, and were taken possession of by the executors, with the other papers of his father.

Being shewn a copy of a letter, dated 8th April, 1839, and identified as No. 1, he states that his belief is, though he cannot state positively that it is, the substance of a letter he wrote to his father about that time.

The deponent further says, that John D. Murrell had a claim against Tiernan, Cuddy & Company, amounting to eighty-two thousand four hundred and thirty-eight dollars thirty-seven cents, and the signature of L. & C. Tiernan, and Tiernan, Cuddy & Co., in liquidation, to paper marked No. 2, is signed by the deponent, who was a member of both of said firms, (the said paper No. 2 will be found with Murrell's claim No. 22.)

The deponent says that the Bank of Orleans, up to 1842, had received some six or seven thousand dollars of their claim. There was a subsequent settlement; and in 1842, he thinks, a claim on Louisville, Kentucky, was transferred to the said bank as collateral security, which claim, if recovered, would amount to about eighteen thousand dollars. This claim is a chancery claim, in the hands of Guthrie & Tyler, the counsel for the bank.

He also says, that Colonel Garland, the agent of John D. Murrell, Clinton, Mississippi, has collected a number of claims, which were to go in payment of said Murrell's claim. Murrell has received, on account of his claim, three thousand dollars from Macrau and Raine.

Deponent was the cyndic of Tiernan, Cuddy & Co., or the liquidating partner, which is the same thing. He collected, as cyndic, he supposes, about one hundred thousand dollars; he paid the whole of it, and a good deal more, in satisfaction of the debts of Tiernan, Cuddy & Co. He was, from April, 1836, to May, 1842, diligently employed in collecting the assets of said firm. He collected, as far as it was practicable to collect, and pushed his collections to the last extremity.

Corrections of the evidence of William T. Somerville.

William T. Somerville, heretofore examined, appeared and corrected his evidence as follows:

The real estate in Maryland, of which Luke Tiernan died seized, has been all sold, distributed, and accounted for, in the orphan's court of Baltimore county, excepting a joint interest with several others in the land of the Old Factory, which is of little value. Deponent does not believe it will produce to the estate five hundred dollars. In the last settlement with the orphan's court, on the 29th of May, 1845, that account will shew a balance in cash, in the hands of the executors, of five hundred and six dollars ninety-one cents. With this balance, and from the outstanding debts considered good, unsaleable stocks, and real estate out of the State of Maryland, there may be realized hereafter, by the executors, the sum of thirty thousand dollars.

All of which is respectfully submitted.

JNO. CARRERE, *Auditor.*

Letter from C. Tiernan to Luke Tiernan, N. Orleans, April 8, 1839.

NEW ORLEANS, *April 8th*, 1839.

DEAR FATHER: I have this day made an arrangement with Andrew Hodge, junr., esqr., president of the Bank of Orleans, whereby he releases the attachment on the effects of Tiernan, Cuddy & Co., in the State of Mississippi, and the same is made in conformity with your wishes, expressed in your letter of 8th December and 11th March last.

The entire indebtedness of Tiernan, Cuddy & Co. to the Bank of Orleans, amounts, with interest to the 1st March, 1839, to the sum of forty-one thousand two hundred and sixty-five dollars and forty-one cents, ($41,265 $\frac{41}{100}$,) for which amount you will please enter a judgment for the Bank of Orleans, payable in six semi-annual instalments, from the 1st March, 1839, with stay of execution on said judgment for these respective payments, payable in said stated periods. I have assured Mr. Hodge that there would be no delay in perfecting this arrangement on your part, and that the same should be completed with as little expense or trouble as possible to the bank; and it is also understood, that the time granted by the bank is not to be availed of beyond what may be necessary for us to collect our debts now attached by the bank.

(Signed) CHAS. TIERNAN.

To LUKE TIERNAN, Baltimore.

"Duplicate." Original per mail, 9th April, 1839.

Discharge of C. Tiernan, under the insolvent laws of Maryland.

Charles Tiernan, an insolvent—No. 505.

In the case of Charles Tiernan, an applicant for the benefit of the insolvent laws of Maryland, the undersigned, commissioners of insolvent debtors of the city and county of Baltimore, in pursuance of the act of assembly, entitled "An act relating to insolvent debtors of the

city and county of Baltimore," *to* report to Baltimore county court, that, having diligently enquired and examined into the nature and circumstances of the said application, it appears, that the said Charles Tiernan hath complied with the terms and conditions of the said insolvent laws, and hath acted fairly and bona fide; and the said commissioners have granted to the said Charles Tiernan a final discharge; and the said commissioners now return to Baltimore county court the schedule and all the proceedings in the matter of the application aforesaid.

Given under our hands this seventeenth day of November, in the year eighteen hundred and forty-two.

I hereby certify, that the above is a true copy taken from the original paper on file in the office of the clerk of Baltimore county, in the above case.

In testimony whereof, I hereunto subscribe my name, and affix the [SEAL.] seal of Baltimore county court, on this 1st day of April, 1845.

A. W. BRADFORD, *Clerk*.

On the back of the above discharge is thus endorsed: Filed by Mr. Glenn, the 2 Ap., 1845. JNO. CARRERE, *Auditor*.

Account A.—Account A.

DR.

The trust estate of Luke Tiernan, deceased, in account with Alexander Neill, esquire, trustee.

To the trustee, for his commissions at 8 per ct.	$1,315 24		
Do expenses, as per acc't filed	163 00		
		$1,478 24	
" complainants, for their costs as taxed, viz:			
Attorney	$10 00		
Marshal	21 00		
Clerk	48 00		
		79 00	
" auditor, for his fees		110 00	
			$1,667 24
" balance for distribution among creditors		–	14,773 31
			16,440 55
" Thomas Dixon, for claim	No. 1	$565 51	$297 77
" The Merchants' Bank of New Orleans	2	17,954 02	9,453 57
" Joseph Fowler, jr.	3	7,209 28	3,796 00
" Sally Ann Lowry	4	297 68	156 74
" George A. Stamp, assignee of Francis Fairburn	5	627 19	330 25
" Thomas C. Jenkins and others, executors of Wm. Jenkins	6	1,403 45	738 98
		28,057 13	14,773 31

CR.

1844. May 15	By amount of cash received by the trustee, as per his petition and account filed this day	$16,440 55

Account B.—Account B.

DR.

The trust estate of Luke Tiernan, deceased, in account with Alexander Neill, esquire, trustee.

To the trustee, for his commissions at 8 per ct.			$1,315 24	
Do expenses, as per acc't filed			163 00	
			$1,478 24	
" complainants, for their costs as taxed, viz:				
Attorney			$10 00	
Marshal			21 00	
Clerk			48 00	
			79 00	
" auditor, for his fees			110 00	
				$1,667 24
" balance for distribution among creditors			–	14,773 31
				16,440 55
" Thomas Dixon, for claims	Nos.	1& 12	$6,076 60	$275 57
" The Merchants' Bank of New Orleans		2	17,954 02	814 26
" Joseph Fowler, junior		3& 13	23,864 44	1,082 32
" Sally Ann Lowry		4	297 68	13 50
" George A. Stamp, assignee of Fairburn		5	627 19	28 44
" Thomas C. Jenkins and others, executors of Wm. Jenkins		6	1,403 45	63 64
" Alexander Brown & Sons		7	485 73	22 02
" Commercial Bank of N. Orleans		8	14,968 99	678 88
" Joseph & Samuel Marx		9	5,721 29	259 48
" Cornelius F. A. De Kuyper		10	821 10	37 24
" Mathew T. Scott		11	1,699 22	77 06
" John Glenn, adm'r of Washington Keys		14	13,078 48	593 15
" President, Directors & Co., of the Bank of Virginia		15	15,806 81	716 88
" P. C. Caldwell		16	10,904 33	494 53
" Sayre, Converse & Company		17	7,450 91	337 92
" The Bank of Charleston		18	15,812 46	717 13
" Slocom, Richards & Company		19	2,146 18	97 34
" The Bank of Orleans		20	47,260 72	2,143 39
" The New Orleans & Carrollton Railroad Co.		21	12,231 13	554 71
" John D. Murrell		22	124,472 14	5,645 11
" President and Directors of the Union Bank of Maryland		23	2,662 33	120 74
			325,745 20	14,773 31

CR.

1844. May 15	By amount of cash received by the trustee, as per his petition and account filed this day	$16,440 55

Whereupon the court here pass the following order, to wit:

Order of court remanding the acc'ts back to the auditor.

In the circuit court of the United States.

JOHN D. MURRELL and the Bank of New Orleans
vs.
NEILL & SOMERVILLE.

The Commercial Bank of New Orleans and Mathew T. Scott, claim-

ing to be creditors of Luke Tiernan, entitled to distribution out of the fund involved in controversy, and relying upon the statute of limitations as against other parties claiming distribution out of the same fund; and no notice having been taken by the auditor of the said statute in the accounts and reports filed by him, it is ordered, on motion of J. H. B. Latrobe, solicitor for said bank and M. T. Scott, this 26th day of November, 1845, that the reports of the auditor be remanded to him, together with all the papers in the cause, that he may state such account or accounts as may be required by the said parties or others, and may take such testimony as may be desired by any of them.

R. B. TANEY.
U. S. HEATH.

And now, on this seventeenth day of March, in the year of our Lord one thousand eight hundred and forty-six, John Carrere, esquire, to whom the court remanded the papers in this cause, *and* made his second report in the words following, to wit:

In the circuit court of the United States for the fourth circuit in and [for] the district of Maryland, sitting as a court of equity.

JOHN D. MURRELL et al.
vs.
ALEXANDER NEILL et al.

Auditor's 2d report.

To the honorable the judges of the circuit court of the United States.

The auditor begs leave to report to the court that, in obedience to the order of the 26th of November, 1845, remanding the papers in this cause to him, for the purpose of stating any accounts which might be required by the parties, after giving notice to the respective parties, he proceeded to examine the papers in the said cause, and from them has stated four accounts, marked Nos. 1, 2, 3, and 4, herewith returned. Since the auditor's former report and accounts, two new claims have been filed, Nos. 24 and 25, and claim No. 23, heretofore filed as a copartnership claim, appears from evidence since filed to be a claim against Luke Tiernan individually, in consequence of which the auditor has been compelled to remodel his former accounts A and B, and begs leave to substitute therefor the two accounts No. 1 and No. 1 now filed, which are stated upon the same principles.

He further reports that he has stated accounts No. 3 and No. 4 under written instructions herewith filed, from J. H. B. Latrobe, esquire, solicitor for the Commercial Bank of New Orleans, and Mathew T. Scott. By account No. 3 he has distributed the funds among the copartnership as well as individual creditors; and by account No. 4 he has distributed the fund among the individual creditors.

The objections taken in his former account to claims No. 6, 9, 16, and 23, appear to have been removed by evidence since filed.

No further testimony was offered, or instructions given, by any of the parties.

All of which is respectfully submitted.

JNO. CARRERE, *Auditor.*

Baltimore, 16*th March*, 1846.

Instructions of Mr. Latrobe to the auditor.

Instructions from Mr. Latrobe, referred to in the above report.

To John Carrere, esq., auditor:

The auditor will please to file and return an account in the matter of the distribution of the estate of Luke Tiernan, excluding from participation in the amount to be distributed the claims stated to be barred by the statute of limitations in the exceptions heretofore filed, by the undersigned, to the account already returned.

JNO. H. B. LATROBE,
for Com. Bank of N. O. and T. Scott.

Account No. 1—Account No. 1.

DR.

The trust estate of Luke Tiernan, deceased, in account with Alexander Neill, esquire, trustee.

To the trustee for his commissions at 8 per cent.	$1,315 24		
" " " expenses - -	163 00		
		$1,478 24	
" complainants for their costs, as taxed, viz:			
Attorney - - - -	$10 00		
Marshal - - - -	21 00		
Clerk - - - -	48 00		
		79 00	
" auditor for his fees under previous audit, and his add'l fees		124 00	
			$1,681 24
" balance for distribution among creditors - - -		–	14,759 31
			$ 16,440 55
To Thomas Dixon for claim - - - - No. 1		$565 51	$264 25
" the Merchants' Bank of New Orleans - - 2		17,954 02	8,389 36
" Joseph Fowler, Jr. - - - - 3		7,209 28	3,368 68
" Sally Ann Lowry - - - - 4		297 68	139 10
" George A. Stamp, assignee of Fairburn - - 5		627 19	293 07
" Thos. C. Jenkins and others, ex'rs of Wm. Jenkins 6		1,403 45	655 79
" Alexander Neill, claim - - - - 24		465 63	217 58
" Sam'l J. Donaldson and Wm. J. Cole, assignees of J. Scott - - - - - - 25		401 16	187 45
" President and Directors of the Union Bank of Md. 25		2,662 33	1,244 03
		$31,586 25	$14,759 31

CR.

1844.		
May 15,	By amount of cash received by the trustee, as per his petition and account filed this day - - -	$16,440 55

Account No. 2.—Account No. 2.

DR.

The trust estate of Luke Tiernan, deceased, in account with Alexander Neill, esquire, trustee.

To the trustee for his commissions, at 8 per cent.	$1,315 24		
Do. expenses as per account f'd	163 00		
		$1,478 24	
" complainants for their costs as taxed, viz:			
Attorney	$10 00		
Marshal	21 00		
Clerk	48 00		
		79 00	
" auditor for his fees under previous audit, and his add'l fees		124 00	
			$1,681 24
Balance for distribution among creditors		–	14,759 31
			$16,440 55
" Thomas Dixon, for claims	Nos. 1&12	$6,076 60	$274 61
" the Merchants Bank of New Orleans	2	17,954 02	811 32
" Joseph Fowler, jr.	3&13	23,864 44	1,078 41
" Sally Ann Lowry	4	297 68	13 45
" George A. Stamp, assignee of Fairburn	5	627 19	28 35
" Thomas C. Jenkins and others, ex'rs of Wm. Jenkins	6	1,403 45	63 43
" Alexander Brown & Sons	7	485 73	21 95
" Commercial Bank of New Orleans	8	14,768 99	676 43
" Joseph & Samuel Marx	9	5,721 29	258 60
" Cornelius F. A. De Kuyper	10	821 10	37 11
" Mathew T. Scott	11	1,699 22	76 79
" John Glenn, adm'r of Washington Keys	14	13,078 48	590 98
" President, directors, and Co. of the Bank of Virginia	15	15,806 81	714 30
" P. C. Caldwell	16	10,904 33	492 73
" Sayre, Converse & Company	17	7,450 91	336 71
" the Bank of Charleston	18	15,812 46	714 52
" Slocomb, Richards & Company	19	2,146 18	96 98
" the Bank of Orleans	20	47,260 72	2,135 66
" the New Orleans and Carrolton Railroad Co.	21	12,231 13	552 68
" John D. Murrell	22	124,472 14	5,624 77
" president and directors of the Union Bank of Maryland	23	2,662 33	120 32
" Alexander Neill	24	465 63	21 06
" Samuel J. Donaldson and Wm. J. Cole, assignees of J. Scott	25	401 16	18 15
		$326,611 99	$14,759 31

CR.

1844. May 15	By amount of cash received by the trustee, as per his petition and account filed this day	$16,440 55

1005.

Account No. 3.—Account No. 3.

DR.

The trust estate of Luke Tiernan, deceased, in account with Alexander Neill, esquire, trustee.

To the trustee for his commissions, at 8 per ct. -	$1,315 24		
Do. expenses - - - - -	163 00		
		$1,478 24	
" complainants for their costs as taxed, viz:			
Attorney - - - - - -	$10 00		
Marshal - - - - - -	21 00		
Clerk - - - - - -	48 00		
		79 00	
" auditor for his fees under previous audit, and his add'l fees		124 00	
			$1,681 24
Balance for distribution among creditors -		-	14,759 31
			$16,440 50
" the Merchants' Bank of New Orleans - - No.	2	$17,954 02	$2,347 90
" Thos. C. Jenkins and others, ex'rs of Wm. Jenkins - - - - - -	6	1,403 45	183 53
" Alexander Brown & Sons - - -	7	485 73	63 52
" Commercial Bank of New Orleans - -	8	14,968 99	1,957 54
" John & Samuel Marx - - - -	9	5,721 29	748 19
" Cornelius F. A. De Kuyper - - -	10	821 10	107 39
" Mathew T. Scott - - - - -	11	1,699 22	222 21
" Slocomb, Richards & Co. - - -	19	2,146 18	280 67
" the Bank of Orleans - - - -	20	47,260 72	6,180 31
" president and directors of the Union Bank of Maryland - - - - - -	23	2,662 33	348 17
" Sam'l J. Donaldson and Wm. J. Cole, assignees of J. Scott - - - -	25	401 16	52 47
" John D. Murrell - - - -	22	683 60	89 40
" Joseph Fowler, jr. - - - -	13	16,655 16	2,178 01
		$112,862 95	$14,759 31

CR.

1844. May 15	By amount of cash received by the trustee, as per his petition and account filed this day - - - -	$16,440 55

Account No. 4.—Account No. 4.

DR.

The trust estate of Luke Tiernan, dec'd, in account with Alexander Neill, esquire, trustee.

To the trustee, for his commissions, at 8 per cent.	$1,315 28		
Do. expenses - - - - -	163 00		
		$1,478 24	
" complainants for their costs as taxed, viz:			
Attorney - - - - -	$10 00		
Marshal - - - - -	21 00		
Clerk - - - - -	48 00		
		79 00	
" auditor for his fees under previous audit, and his add'l fees		124 00	
			$1,681 24
Balance for distribution among creditors -		-	14,759 31
			$16,440 55
" the Merchants' Bank of New Orleans - - No. 2		$17,954 02	$11,818 81
" Thos. C. Jenkins and others, ex'rs of Wm. Jenkins - - - - - 6		1,403 45	923 86
" Sam'l J. Donaldson and Wm. J. Cole, assignees of J. Scott - - - - 25		401 16	264 07
" Union Bank of Maryland - - - 23		2,662 33	1,752 57
		$22,420 96	$14,759 31

CR.

1844. May 15	By amount of cash received by the trustee, as per his petition and account filed this day - - - -	$16,440 55

And now, on this thirtieth day of June, in the year of our Lord one thousand eight hundred and forty-six, John D. Murrell, and others, by their solicitors, filed in this cause exceptions to the auditor's report in the words following, to wit:

Exceptions of John D. Murrell & others to the 3d report of the auditor.

MURRELL et al., vs. NEILL et al. } In equity.

Circuit court of the U. S., 4th circuit.

John D. Murrell, the Bank of Orleans, John Glenn, adm'r of Washington Keys, Joseph & Samuel Marx, and the New Orleans & Carrollton R. Road company, creditors of the late Luke Tiernan, except to the second report of the auditor in this case made, and to accounts therewith filed.

1. Because by his said report and account No. 1 the auditor has excluded from a participation in the distribution of the fund, as well

these exceptants as all others, the partnership creditors of Luke Tiernan, deceased.

2. Because said auditor has not reported to the court his account No. 2, as the proper distribution of the fund, as your exceptants insist that it is.

3. That the amount allowed to the trustee, Alexander Neill, for his commissions is excessive.

J. GLENN,
F. W. FRICK,
S. T. WALLIS,
For exceptants.

Pinkney C. Caldwell unites in the above exceptions.

CHARLES F. MAYER,
For Caldwell.

Afterwards, on the eleventh day of July, in the year of our Lord one thousand eight hundred and forty-six, the court here passed an order in the words following, to wit:

United States of America, fourth circuit, in and for the district of Maryland.

MURRELL & others, vs. NEILL, trustee of Tiernan. } In equity.

At a special session of the circuit court appointed by the presiding Judge.

Decree.

This cause came on to be heard, and was argued by counsel, and thereupon, upon consideration thereof, it is, on the eleventh day of July, in the year eighteen hundred and forty-six, ordered, adjudged, and decreed as follows, viz: That the several exceptions heretofore filed to the account No. 1, reported by the master appointed by this court, and filed on the 17th day of March, 1846, be overruled, with costs; that the said account No. 1 be, and the same is hereby confirmed, and that the said trustee proceed to distribute and pay over the funds accordingly.

R. B. TANEY,
U. S. HEATH.

Appeal.

From which said decree, so as aforesaid made, the said John D. Murrell, and the Bank of New Orleans, by their solicitors aforesaid, have prayed an appeal to the Supreme Court of the United States, to be held at the city of Washington, on the first Monday of December next, in the words following, to wit:

JOHN D. MURRELL, and the Bank of New Orleans,
vs.
ALEXANDER NEILL, and William T. Somerville.

Order to enter appeal.

Mr. SPICER: Enter an appeal from the decree of the circuit court overruling the exceptions to the auditor's account, and report in this cause.

J. GLENN
S. T. WALLIS,
For complainants.

July 14, 1846.

And to them it is granted. Thereupon it is ordered by the court here, that the record and proceedings aforesaid, with all things relating to the same, be transmitted to the said Supreme Court; and the same are transmitted accordingly.

Appeal bond.

Know all men by these presents, that we, John D. Murrell, Samuel Garland, and John Glenn, are held and firmly bound unto Alexander Neill and William T. Somerville in the full and just sum of five hundred dollars, current money, to be paid to the said Alexander Neill and William T. Somerville, their heirs, executors, administrators, or assigns; to which payment, well and truly to be made and done, we hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 7th day of November, in the year of our Lord one thousand eight hundred and forty-six.

Whereas lately, in the circuit [court] of the United States for the fourth circuit, in and for the Maryland district, it was ordered, adjudged, and decreed as follows, viz: "That the several exceptions heretofore filed to the account No. 1, reported by the master appointed by this court, and filed on the 17th day of March, 1846, be overruled, with costs; that the said account No. 1 be, and the same is hereby, confirmed, and that the said trustee proceed to distribute and pay over the funds accordingly."

From which said decree, so as aforesaid rendered, John D. Murrell, by his solicitor, has prayed an appeal to the Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next. Now, the condition of the above obligation is such, that if the said John D. Murrell shall well and truly prosecute, with effect, his said appeal, and pay unto the said Alexander Neill and William T. Somerville, all such damages, costs, and charges as shall be awarded to them by the said Supreme Court, in case he fail to make

good his said appeal, then the above obligation to be void and of none effect, otherwise to be and remain in full force and virtue.

JOHN D. MURRELL, [L. S.]
S. GARLAND, [L. S.]
JOHN GLENN. [L. S.]

Signed, sealed, and delivered in the presence of, as to John Glenn—
WM. B. PERINE.

VIRGINIA, TOWN OF LYNCHBURG, *to wit:*

I, Daniel A. Wilson, judge of the circuit superior court of law and chancery for the fourth judicial district of the State of Virginia, and only judge of the circuit superior court of law and chancery for the said town of Lynchburg, do hereby certify, that John D. Murrell and Samuel Garland, who are personally known to me, and who have signed and sealed the aforegoing bond, this day personally appeared before me, in the town and State aforesaid, and acknowledged the said bond to be their act and deed, for the purposes therein mentioned.

Given under my hand and seal this 7th day of November, 1846.

DANIEL A. WILSON. [L. S.]

On the back of said bond is thus endorsed:

Approved November 14, 1846.

R. B. TANEY.

Citation.

The United States of America to Alexander Neill and William T. Somerville, greeting:

Whereas lately, in the circuit court of the United States for the fourth circuit, in and for the Maryland district, it was ordered, adjudged, and decreed, "That the several exceptions heretofore filed to the account No. 1, reported by the master appointed by this court, and filed on the 17th day of March, 1846, be overruled, with costs; that the said account No. 1 be, and the same is hereby confirmed; and that the said trustee proceed to distribute and pay over the funds accordingly."

From which said decree, so as aforesaid rendered, John D. Murrell and the Bank of New Orleans, the complainants in the proceedings in this cause mentioned, by their solicitors, have prayed an appeal to the Supreme Court of the United States, to be had at the city of Washington on the first Monday in December next.

Wherefore you are hereby cited and admonished to be and appear at the said Supreme Court on the day and at the place aforesaid, to show cause, if any there be, why the said decree should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand and seal, this fourteenth day of November, in the year of our Lord one thousand eight hundred and forty-six.

R. B. TANEY. [SEAL.]

I acknowledge notice of the above citation.

JNO. NELSON,
Att'y for Neill & Somerville.

Afterwards, to wit, on the fourteenth day of July, in the year of our Lord one thousand eight hundred and forty six, the parties aforesaid, by their solicitors aforesaid, filed in said cause an agreement, in the words following, to wit:

In the circuit court of the United States for the fourth circuit, in and for the Maryland district.

MURRELL et al.
vs.
NEILL et al.
} Sitting in equity.

Agreement.

It is agreed, that on the appeal in this case, taken by John D. Murrell and the Bank of New Orleans and others, from the decree of said court, passed on the eleventh of July, 1846, the following papers shall compose the record to be transmitted to the Supreme Court, to wit: the bill, filed 3d October, 1843; the answer, filed 11th January, 1844, and exhibit A, therewith filed; the petition to amend, filed 26th April, 1844; the amended bill, filed 9th May, 1844; the petition of Neill, filed 15th May, 1844, and exhibit A, filed therewith; the order of court, filed 18th May, 1844; the answer to amended bill, filed 29th June, 1844; the replication, filed 17th July, 1844; the petition to enlarge time to take testimony, filed 16th November, 1844, and order of court therewith; the interrogatories, cross interrogatories, and all the proceedings under the commission to take testimony, issued on the 3d December, 1844; the petition to refer to auditor, filed 9th October, 1844; the order of reference to auditor, filed 15th November, 1844; the depositions taken before auditor, filed 3d November, 1845; the auditor's report, filed 3d November, 1845, and accounts A and B; the order of court remanding cause to auditor, filed 26th November, 1845; auditor's second report, filed 17th March, 1846; the instructions of J. H. B. Latrobe, filed therewith, and accounts 1, 2, 3, and 4, filed therewith; exceptions of S. T. Wallis, filed 30th June, 1846; the decree of court, filed 11th July, 1846.

It is admitted that Calvin Tate, one of the firm of Tiernan, Cuddy & Co., applied for the benefit of the bankrupt law of the United States on the 18th day of February, 1842, and obtained his discharge under said application.

The amount of debts returned by him in his said application, as due by Tiernan, Cuddy & Company, was 569,069 49 cents; and the

amount returned as due to said firm was $800,743 47, at the time of said application.

BROWN & BRUNE,
For Fowler.
S. T. WALLIS,
For Murrell & B'k of Orleans.
CHARLES F. MAYER,
For P. C. Caldwell.

In testimony that the aforegoing is a true copy, taken from the record and proceedings of the circuit court aforesaid, I hereunto [L. S.] subscribe my name, and affix the seal of the said circuit court, this seventh day of December, in the year of our Lord one thousand eight hundred and forty-six.

THO. SPICER,
Cl'k Circuit Court.

Filed, January 4th, 1847.